

**REMARKS**

Applicants thank the Examiner for the very thorough consideration given the present application.

Applicants thank the Examiner for the acceptance of the amended drawing filed on April 2, 2004.

Applicants also acknowledge with appreciation the allowance of claims 1-12, 21 and 22.

Claims 1-23 are now present in this application. Claims 1, 8 and 13 are independent.

**I. Rejection Under 35 U.S.C. §112, 2<sup>nd</sup> Paragraph**

Claims 13-20 and 23 stand rejected under 35 U.S.C. §112, 2<sup>nd</sup> Paragraph. This rejection is respectfully traversed.

The Examiner has set forth certain instances wherein the claim language is not clearly understood.

Applicants respectfully submit that the claims, as they stand, particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

With respect to claim 13, which recites that "a manually operated control switch for transmitting power to the pump," Applicant respectfully submits that this is clear. The Office Action indicates that it is not clear how the switch is used for transmitting power to the pump because the necessary power for

the pump is provided by a power source 28 and the claim language is misleading.

Applicant respectfully submits that while the power used to energize and operate the pump is generated by power source 28, after the power is generated by power source 28, it is transmitted to the pump by electric lines that are controlled by a manually operated switch. The manually operated switch is provided to transmit the power generated by power source to the pump. When the switch is on, power is transmitted to the pump and when the switch is off, power is not transmitted to the pump. It is in this sense that the claimed language recites a manually operated control switch for transmitting power to the pump.

Accordingly, this claim language is not misleading. Rather, it accurately reflects what happens in the invention.

Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

## **II. Rejections Under 35 U.S.C. §102**

Claims 13-16, 19, 20 and 23 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 5,359,942 to Ward. This rejection is respectfully traversed.

A complete discussion of the Examiner's rejection is set forth in the Office Action, and is not being repeated here.

A prior art reference anticipates the subject of a claim when the reference discloses every feature of the claimed invention, either explicitly or inherently (see, In re Paulsen, 30 F.3d 1475, 1478, 1479, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994), In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990), Hazani v. Int'l Trade Comm'n, 126 F.3d 1473, 1477, 44 USPQ2d 1358, 1361 (Fed. Cir. 1997) and RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

Applicants respectfully submit that the combination of elements as set forth in independent claim 13 is not disclosed by Ward.

For example, the Office Action indicates that platform 30 is the claimed "mounting device" and that the mounting device (platform 30) is supported by the hydraulic device assembly (Fig. 1). Applicant respectfully submits that the situation is actually opposite to this description. In col. 4, lines 38, ff., Ward discloses that the major components of the hydraulic device, i.e., door positioning system, are mounted on the platform 30. In other words, the platform 30 supports the hydraulic device. The hydraulic device is shown in Fig. 2, as element 32, and it clearly does not support platform 30. An inspection of Figs. 1 and 2 reveals that it is platform 30 that supports hydraulic device 30.

Accordingly, at least because hydraulic device 32 does not support platform 30, Ward does not anticipate claims 13-16, 19, 20 and 23.

Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

With regard to dependent claims 14-16, 19, 20 and 23, Applicants submit that claims 14-16, 19, 20 and 23 depend, either directly or indirectly, from independent claim 13, which is allowable for the reasons set forth above and, therefore, claims 14-16, 19, 20 and 23 are allowable based on their dependence from independent claim 13.

Reconsideration and allowance of claims 13-16, 19, 20 and 23 are respectfully requested.

Claims 13, 14, 17 and 18 stand rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent 4,776,415 to Brice. This rejection is respectfully traversed.

Claim 13 recites, among other features, “. . . a manually operated control switch for transmitting power to the pump.”

The Office Action states that Brice discloses a manually operated control switch or button (116) for substantially transmitting power to the pump, referencing col. 3, lines 55-62 and col. 4, lines 16-22.

Applicants respectfully submit that Brice’s “pump control 116” has nothing to do with supplying power to the pump. Rather, pump control 116 is disclosed as having a “extend position” (see col. 3, line 58, and a “retract position” – see col. 4, lines 16-17). If the pump control 116 in the “extend position”, the rams 48 and 50 are moved to their extended position – see col. 3, lines 58-60, whereas if

the pump control 116 is in the “retract position”, the rams 48 and 50 are retracted into hydraulic cylinders 34 and 36 – see col. 4, lines 16-19.

Even if “pump control 116” is manually operated, it has nothing to do with transmitting power to a hydraulic device. Instead, “pump control” merely is a mechanism to choose whether the hydraulic rams extend or retract.

Accordingly, Brice does not anticipate independent claim 13.

With regard to dependent claims 14, 17 and 18, Applicants submit that claims 14, 17 and 18 depend, either directly or indirectly, from independent claim 13 which is allowable for the reasons set forth above and, therefore, claims 14, 17 and 19 are allowable based on their dependence from independent claim 13.

Reconsideration and allowance of claims 13, 14, 17 and 18 are respectfully requested.

### **III. Rejection under 35 U.S.C. §103**

Claim 15 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Brice in view of Ward. This rejection is respectfully traversed.

A complete discussion of the Examiner's rejection is set forth in the Office Action, and is not being repeated here.

As noted above, Brice does not disclose a manually operated control switch for transmitting power to the pump.

Ward is not applied to supply that deficiency, so even if it were proper to modify Brice in view of Ward, as asserted, i.e., to provide a hydraulic motor on Brice, the resulting modification of Brice would not meet or render obvious the claimed invention, which recites a combination of features including a manually operated control switch for transmitting power to the pump.

Accordingly, this rejection is improper and should be withdrawn.

Furthermore, during patent examination the PTO bears the initial burden of presenting a *prima facie* case of unpatentability. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444(Fed. Cir. 1992); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788(Fed. Cir. 1984).

Applicants respectfully submit that the Office Action fails to make out a *prima facie* case of obviousness of the claimed invention because it does not provide proper motivation for one of ordinary skill in the art to combine the references, as asserted.

A showing of a suggestion, teaching, or motivation to combine the prior art references is an "essential evidentiary component of an obviousness holding." C.R. Bard, Inc. v. M3 Sys. Inc., 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998). This showing must be clear and particular, and broad conclusory statements about the teaching of multiple references, standing alone, are not "evidence." See In re Dembiczak, 175 F.3d 994 at 1000, 50 USPQ2d 1614 at 1617 (Fed. Cir. 1999).

Additionally, a factual inquiry whether to modify a reference must be based on objective evidence of record, not merely conclusionary statements of the Examiner. See, In re Lee, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002).

The Office Action alleges that one of ordinary skill in the art would be motivated to combine these references to provide a reliable hydraulic system capable of operating in an extended position or a retracted position.

Applicant respectfully submits that there is no objective evidence of record indicating that Brice's device, which already has a hydraulic system capable of operating in an extended position or a retracted position, has an unreliable system that is in need of being made reliable. Absent objective factual evidence of a need for improved reliability, the alleged motivation to combine these two references is speculation and speculation is not a proper basis for a rejection.

Moreover, Brice's device needs to be lightweight as do all baby walkers so as to be operable by babies. Substituting Ward's relatively massive hydraulic cylinder having a double acting hydraulic motor for Brice's small, lightweight hydraulic cylinders would not be obvious. In fact, it would be counter productive, adding size and weight to a baby walker that would probably render the baby walker so heavy as to be not fit to be a baby walker.

Because the Office Action has not presented any objective evidence of proper motivation to combine these references as suggested, it fails to make

out a *prima facie* case of obviousness of the claimed invention recited in claim

15. Accordingly, the rejection is improper and should be withdrawn.

Reconsideration and allowance of claim 15 are respectfully requested.

#### **IV. Conclusion**

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Robert J. Webster, Registration No. 46,472, at (703) 205-8000, in the Washington, D.C. area.

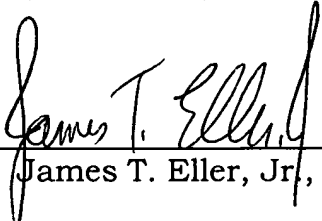
Prompt and favorable consideration of this Amendment is respectfully requested.

Pursuant to the provisions of 37 CFR 1.17 and 1.136(a), Applicants respectfully petition for a one (1) month extension of time for filing a response in connection with the present application. The required fee of \$55.00 is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By:   
James T. Eller, Jr., #39,538

JTE/RJW/adt/gf 

P.O. Box 747  
Falls Church, Virginia 22040-0747  
(703) 205-8000